

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1182 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MEHBUBMIYA AHMEDMIAN SAYYED

Versus

STATE OF GUARAT

Appearance:

MR HN JHALA for Petitioner

MR ST MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/10/1999

ORAL JUDGEMENT

Heard learned counsel Mr. H.N.Jhala for the appellant (original accused) and learned APP Mr. S.T. Mehta for the State.

The appeal under section 454 of Cr.P.Code is filed against the judgment and order dated 3.10.1997 passed by the learned Addl. Sessions Judge, Ahmedabad City in Sessions Case No. 145 of 1993 whereby though the appellant (original accused) was acquitted along with other accused, a licenced pistol of the ownership of the appellant was ordered to be confiscated. This appeal is confined only to the order of confiscation of licenced pistol.

The applicant accused along with other accused was prosecuted for the offences punishable under sections 148, 149, 307, 506(2) of the I.P.Code, sec. 25(1) of the Arms Act and under sec. 135 of the Bombay Police Act. Total five accused were tried by the learned Addl. Sessions Judge and all of them are acquitted by the impugned judgment. The present appellant had prayed individually by submitting an application (exh.45 before the trial court) that muddamal pistol seized by the police during the investigation of the crime, should be restored to him as the same is not used in any manner whatsoever in the offence. The case of the prosecution was that the present accused had shown pistol to one of the witnesses viz. complainant Abdul Rafik Abdul Rahim at the time of commission of offence. On perusal of the judgment and other relevant record, as rightly observed by the learned Addl. Sessions Judge, the prosecution has not proved the charges levelled against the accused persons. Complainant himself has turned hostile and has not supported the case of the prosecution. In the reasoning part of the judgment, learned Addl. Sessions Judge has not discussed anything as to why application exh.45 preferred by the appellant (original accused) requires rejection. However, in the operative portion, learned Judge has observed that " However, the said pistol having been allegedly used in the commission of the offence, and has been produced by the accused himself in the police station vide panchanama exh.40, it is not desirable to hand over custody of muddamal pistol to the said accused. The application exh.45 therefore is hereby dismissed and the pistol is ordered to be confiscated under sec.452 of Cr.P.Code. "

It is not a matter of dispute that pistol was tendered by the appellant voluntarily in the police station and he is consistent about the ownership of the said pistol. It is categorically stated by him that he was holding valid licence on the day on which the offence as alleged to have been committed. Ld. Counsel Mr. Jhala submits that even today, licence to hold the very pistol is valid and the appellant is not served even with show cause notice by any authority under the Arms Act. When, after inquiry or trial, accused is discharged or acquitted, the Court should normally restore the property which is produced before it or which is in the custody of the court to a person from whose custody it was taken. Ld. Counsel Mr. Jhala has relied upon the decision of the Apex Court in the case of N. Madhavan v/s State of Kerala, reported in AIR 1979 SC 1829. The Apex Court has considered this aspect. I would like to reproduce relevant observations made by the Apex Court in the aforesaid decision in paras 8 to 11 :-

"8. The material part of Section 517 of the Code of Criminal Procedure, 1898 (which has been re-enacted as Section 452(1) in the Code of 1973), reads as follows:-

" When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence."

An analysis of this provision would show that it refers to property or document (a) which is produced before the Court, or (b) which is in the custody of the Court, or (c) regarding which any offence appears to have been committed, or (d) which has been used for the commission of any offence. Then, at the conclusion of the enquiry or trial, the disposal of any class of the property listed above, may be made by (i) destruction, (ii) confiscation, or (iii) delivery to any person entitled to the possession thereof.

9. In the case before us, the gun in question does not fall either under class (c) or class (d) because it is neither "property" regarding which any offence appears to have been committed " nor " which has been used for the commission of any offence ". The acquittal of the accused on the ground that this gun was used in causing the fatal injury to the deceased, only in self-defence, necessarily involved a finding that the gun was not used in the commission of any offence for which the accused was tried. The gun was obviously property falling under clause (b).

10. The words "may make such order as it thinks fit" in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or

manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from the salutary rule of practice is not to be lightly made, when there is no dispute or doubt- as in the instant case- that the property in question was seized from the custody of such accused and belonged to him.

11. Let us now test the impugned order in the light of these principles. Can it be said to be an order made judicially? The answer is unhesitatingly "No". The Sessions Judge did not give any reason, whatsoever for directing confiscation of this licenced gun admittedly belonging to the appellant-accused. Nor was there any material before him indicating the special circumstances which would warrant a departure from the general rule aforesaid. Nor is there anything in the record to show that the Sessions Judge had, before passing the order of confiscation, given an opportunity of being heard to the accused, specifically with regard to this matter. The order of confiscation of the gun was thus manifestly arbitrary."

In view of the clear proposition of law as enunciated by the Apex Court above, this is a fit case where possession of muddamal pistol requires to be restored to the appellant. Ld. Counsel Mr. Jhala has stated that the pistol was not "used" and counter argument of ld. APP Mr. Mehta is that pistol was pointed at the complainant and that would amount to "use" of pistol. However, without entering into interpretation of word "used", in view of clear settled legal position propounded by the Apex Court in the decision of N.Madhavan (supra), appeal requires to be allowed. Pistol is a valuable movable property and in absence of any specific provision, said property should not be confiscated and should be restored to the person from whose custody or possession the same was recovered during the course of investigation or inquiry. Further, the

learned Addl. Sessions Judge has not given reasons why application exh.45 for restoration of custody of muddamal pistol is rejected and why muddamal pistol requires to be confiscated.

For the reasons aforesaid, appeal is allowed. The impugned judgment and order dated 3.10.1997 passed by the learned Addl. Sessions Judge, Ahmedabad City in Sessions Case No. 145/93 is hereby quashed and set aside so far as confiscation of muddamal pistol is concerned. Muddamal pistol is ordered to be restored to the possession of the appellant (original accused) from whose possession the same was recovered by the police (tendered by the appellant accused in the police station) on proper identification and verification of validity of licence held by the appellant. Appeal stands allowed accordingly.

15.10.1999 [C.K. BUCH, J]

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